United Nations CAT/C/SR.1302

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
30 April 2015

Original: English

Committee against Torture
Fifty-fourth session

Summary record (partial)* of the 1302nd meeting
Held at the Palais Wilson, Geneva, on Tuesday, 28 April 2015, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Sixth periodic report of Spain (CAT/C/ESP/6; CAT/C/ESP/Q/6; HRI/CORE/ESP/2010)

1. *At the invitation of the Chairperson, the delegation of Spain took places at the Committee table.*

2. **Ms. Menéndez** (Spain), introducing her country's sixth periodic report (CAT/C/ESP/6), said that her delegation included a judge and a prosecutor, nominated by the General Council of the Judiciary and the Attorney General's Office, respectively, who would act in full independence during the dialogue with the Committee. In the period since 2009, Spain had responded to the Committee's previous concluding observations by ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, both of which provided for the submission of individual communications. National legislation currently before Parliament included a draft organic act amending the Criminal Procedure Act though the incorporation into the country's legal framework of European Union Directive 2013/48. The reform clearly specified the right of any person suspected of committing an offence to defence throughout the legal proceedings, including access to a lawyer at any time and particularly when statements were made, to have a family member informed of the detention and to contact a third person of his or her choice and the relevant consular authorities in the case of foreign nationals.

3. The new wording strengthened the guarantees for detainees held in incommunicado detention, which was used only in exceptional circumstances. Derogations to certain rights could only be justified by an urgent need to avoid serious harmful consequences to the life, freedom or physical integrity of a person or to allow the prosecuting authorities to take immediate action to avoid the criminal process being seriously compromised. The amendment had led to a drastic reduction in the number of cases of incommunicado detention requested by the security forces or approved by judges; just 8 per cent of persons held on terrorist charges since 2013 had been held incommunicado.

4. Amendments to the Criminal Procedure Act meant that higher tribunals were now standard, in line with article 14, paragraph 5, of the International Covenant on Civil and Political Rights. The Criminal Code had also been amended with the introduction of a separate offence of enforced disappearance, in line with the International Convention for the Protection of All Persons from Enforced Disappearance. Parliament had approved the Act on the Legal Status of Victims of Crime, which covered redress through a criminal trial as well as the mitigation of other traumatic emotional effects.

5. In response to the Committee's previous concluding observations, a database had been established within the State Secretariat for Security to collect information on claims of torture or ill-treatment and deprivation of rights during police custody; it had been used to supply the detailed statistics given in the periodic report.

6. The Government's commitment to combating violence against women was demonstrated by the 2013–2016 National Strategy on the subject. Legislation had been adopted to ensure appropriate punishment of perpetrators of such violence, including violence committed outside the country and the offence of forced marriage. Much had been done to raise public awareness of the issue. Furthermore, with the adoption in 2011 of the Organic Act on the Rights and Freedoms of Foreign Nationals in Spain, foreign women in an irregular situation who were victims of domestic violence could report the violence to the police without the fear of being expelled from the country.

7. The Criminal Code had been amended to address incitement to hatred or violence against groups and minorities. Many initiatives, including training courses for law enforcement officers, had been undertaken to prevent, investigate and punish racist incidents in the context of the Strategy to Combat Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance.

8. In 2009, the Committee had expressed concern that the Criminal Code contained no separate offence of human trafficking; the Code had since been amended to include a definition of trafficking in persons and a legal framework had been established to protect trafficking victims, through comprehensive assistance, a period for recovery and reflection and then the possibility of leave to remain on the basis of exceptional circumstances.

9. **The Chairperson** (Country Rapporteur), emphasizing the importance of all countries using the same definition of torture, noted with concern that the State party had decided not to include intimidation and coercion in the constitutional definition of torture, affirming that they were covered under crimes against freedom. He would welcome information on a recent judicial decision disallowing any interpretation that might permit such acts in the exercise of official functions. Referring to the information provided in the report on sentencing guidelines for torture, he asked for details of specific cases. A list of complaints against police officers had been included in the report, but none of them dealt specifically with acts of torture. In respect of domestic violence, he asked for a definition of "habitual" in relation to gender-based violence and the type of investigation that was conducted and punishment applied in such cases. The report included a list of judicial decisions in which the Convention was mentioned but it would be useful to provide some context; the Committee was always pleased to receive positive examples.

10. He would welcome information on any recommendations related to the Convention made by the Ombudsman and specifically whether any had been implemented, as well as details on the way in which that office functioned. The integration of European Union Directive 2013/48 into national legislation was a welcome development, but the wording of the Act concerned could be interpreted as meaning that the authorities could decide whether a detainee could have access to counsel. He asked whether any minors had been held in incommunicado detention in the recent past and, if so, whether they were held separately by gender and by age and what monitoring process was applicable in such cases.

11. Noting that two thirds of police stations were equipped with video monitoring systems, he asked whether there were plans to expand those technical resources. In that connection and in the light of claims that NGOs had not been allowed to enter places of detention of undocumented immigrants in Ceuta and Melilla, the installation of cameras in cells there would allow the Government to disprove accusations of inhuman treatment if they were false. Reports had also been received that not all asylum requests made there were being dealt with and that women there who requested lawful abortion services faced humiliating barriers, with plans to oblige them to lodge complaints of rape first of all.

12. The State party had done much to combat trafficking in persons. It would be useful to know what training was being provided to ensure the proper implementation of the legislation adopted and what resources were available. Furthermore, was information available on the particular challenges related to immigrant women in an undocumented situation and had action taken in that respect been effective?

13. Cases of pardons being granted after sentences for acts of torture had been pronounced, such as that of 13 officers in Catalonia, were a worrying development that might be in violation of the Convention and raised the question of how pardons were used. The representative of the Attorney General's Office could perhaps comment on allegations that the Office did not generally provide support for persons bringing complaints concerning acts of torture.

14. There had been cases in 2011 and 2012 of public demonstrations being broken up by the police, resulting in injuries and a related death. Given that it had not been possible to identify the police officers concerned, had due diligence been exercised in the investigations and was the idea of command responsibility accepted?

15. He would be interested to know whether anyone who had been detained or convicted on charges related to terrorism had made allegations of torture and, if so, whether compensation or rehabilitation had been awarded under article 14 of the Convention.

16. **Mr. Gaye** (Country Rapporteur) said that sufficient information had yet to be provided in order to evaluate the effectiveness of training for law enforcement officials. He asked whether such training was assessed and to what extent it had improved the conduct of law enforcement officials, particularly in relation to the use of excessive force.

17. Turning to specific cases, he said that the Committee had received reports of the use of excessive force by law enforcement officials in the Spanish exclaves of Ceuta and Melilla. The Spanish Civil Guard had been filmed in October 2014 using batons to repel a migrant attempting to enter Melilla. The victim had been injured and later transferred to a migrant holding centre. That same day, another five victims had also been injured in a similar scenario. In April 2014, police had used tear gas to prevent people from entering Melilla, leaving some 50 injured. He wished to know whether the delegation was aware of the situation and whether investigations had been launched into the circumstances surrounding those incidents.

18. On article 11 of the Convention, he said that information was lacking in the report on what had been done to combat the high rates of suicide and violent death among persons held in detention. He would be interested to know the outcome of the Suicide Prevention Programme implemented by the General Secretariat of Prisons. He would also welcome information on prison conditions in general in view of the fact that Spain was seeking to promote alternative measures to imprisonment and that overcrowding was a critical issue. On the latter point, he had received information indicating that migrant holding centres in Ceuta and Melilla were dangerously overcrowded. What was the State party's view of the situation and what measures were envisaged to remedy the problem?

19. The Committee had also received complaints that Basque prisoners were frequently subjected to humiliation, aggression and harsh prison conditions and that they were systematically imprisoned in other areas of Spain, far from their homes and families in the Basque Country.

20. Serious concerns had been raised by the Ombudsman in 2009 on conditions in protection centres for minors. Information should be provided on the number of complaints lodged by minors alleging torture or ill-treatment and the number of such cases investigated, as requested by the Committee. He also asked what steps had been taken to establish appropriate complaints mechanisms in those centres.

21. The information provided on the number of convictions for the period 2009–2012 seemed to relate to all violations committed by law enforcement officials rather than specifically to forms of torture. It was unclear how many torture-related prosecutions there had been, the types of offences committed and the sentences imposed. He asked whether the delegation was in a position to provide the relevant data.

22. The State party's Constitutional Court had issued a judgement obliging all jurisdictions to investigate cases of ill-treatment by law enforcement officers. He asked whether examples could be provided to demonstrate how that jurisprudence had been applied. He also enquired as to the status of the bill to modernize the judicial system.

23. In relation to Organic Act No. 19/1994 on the protection of witnesses and experts in criminal cases, he asked whether victims of torture were also protected — regardless of

whether or not they had been deprived of their liberty — or whether those protective measures were left to the discretion of judges.

24. It was his understanding that under the bill on fundamental rights and freedoms for persons deprived of their liberty, a lawyer had to be present before a person in custody could make a statement to the police. He also understood from the State party that the bill included mechanisms to improve the fundamental guarantees relating to incommunicado detention. He would welcome specific information on how the Government intended to enhance those guarantees and the express provisions of the bill protecting the rights of persons held in incommunicado detention.

25. Article 14 of the Convention provided for fair and adequate compensation for all victims of torture and ill-treatment, including the means for as full rehabilitation as possible. However, the report lacked clear examples of how that right had been applied and the types of compensation and rehabilitation that victims had received. Further information should therefore be supplied on compensation provided and whether rehabilitation programmes or services were readily available to victims. Furthermore, the State party had not given a full response on whether any amnesties existed that could restrict a victim's right to redress.

26. Quoting from article 11.1 of the Organic Act on the Judiciary prohibiting statements obtained under torture from being used as evidence in proceedings, he asked whether the delegation could provide specific examples of judicial decisions upholding that principle.

27. He requested updated information on the status of the reform of article 763 of the Civil Proceedings Act on non-voluntary detention for reasons of mental disorder. He welcomed the adoption of Circular No. 2/2012 prohibiting identity checks based on racial profiling and clarifying other areas of Circular No. 1/2010 that could have been misinterpreted. While he also commended the State party on the introduction of its strategic plan for combating racism, racial discrimination, xenophobia and related intolerance, he said that, in practice, continuous oversight of those policies was crucial in order to discourage intolerance and, where necessary, take appropriate legal action.

28. He noted that under Organic Act No. 4/2000, a migrant woman in an irregular situation who had been the victim of sexual violence had the right to apply for a work permit on the grounds of exceptional circumstances where the perpetrator had been charged and convicted, and that that right was further protected by the amendment made to Organic Act No. 2/2009, which also contained interesting protective measures in relation to victims of human trafficking.

29. The State party was to be commended on the introduction of Organic Act No. 1/2010 amending the Criminal Code and establishing trafficking in persons as a separate offence, thereby meeting one of the goals identified in the Committee's previous concluding observations.

30. Regarding the victims of the Spanish Civil War and the Franco dictatorship, he said that the effectiveness of the Historical Memory Act had been limited by a severe lack of funding. Furthermore, the Amnesty Act seemed contradictory, particularly on the issue of enforced disappearances, and served only to maintain impunity. While enforced disappearance had yet to be made a separate offence, he noted that the State party intended to do so.

31. He asked for an update on the draft legislation to combat human trafficking for the purposes of sexual exploitation and protect victims of that crime, including children.

32. **Mr. Bruni** expressed concern at the country's rising prison overpopulation. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had visited La Modelo prison in Barcelona in June 2012 and found that although the prison had a maximum official capacity of 1,100 inmates, it was in fact

housing 1,781 prisoners. The European Committee had called on the central and Catalan authorities to take action to reduce overcrowding and open new facilities to ease the overburdened prison system. He asked for updated information on the progress made in that regard.

33. The Committee had received reports that the Spanish prison population had increased significantly from approximately 40,000 inmates in 2000 to around 76,000 in 2010, when all 87 of the country's prisons had been overcrowded and the average occupancy rate had reached 165 per cent – the highest rate of imprisonment in the European Union at that time. The situation had shown signs of improvement but the occupancy rate had remained as high as 145 per cent in 2014. He asked what measures had been taken or were envisaged to promote alternatives to imprisonment for non-violent offenders and whether initiatives such as early release for good behaviour had been applied in Spain.

34. Both the European Committee and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had maintained that no prisoner should be held in continuous solitary confinement for more than 14 days. However, the European Committee had found that some prisoners at La Modelo prison had been held in solitary confinement for up to 28 days and could even be held for as long as 48 days. According to the Spanish Government, any extension beyond 14 days had to be authorized by a judge and a medical examination had to be carried out. The latter point raised concerns about the participation of medical professionals in the application of a sanction that seemed to contradict medical ethics. It would be useful if the delegation could provide recent examples of cases of extended solitary confinement, and specify the reasons for such treatment and its health effects, if studied.

35. **Ms. Belmir** said that concerns had been raised about the continued use of excessive force by law enforcement personnel, as seen during the demonstrations in Spain in 2011–2012. There had been reports that a woman had lost the sight of one eye during an incident where law enforcement officials had used rubber bullets and batons. However, it appeared that no charges had been brought and the incident had not been fully investigated.

36. There seemed to be some contradiction in terms of the legal doctrines and terminology used in the justice system. The Supreme Court had approved a rule of law stating that persons convicted of several serious crimes relating to torture were not eligible for early release. The difficulty was the range of legal terms used to refer to torture, as well as the fact that the statute of limitations was applied for certain crimes. The result was that torture had become somewhat embroiled in the terminology and, thus, did not occupy its rightful place within the legal system, which served to increase impunity.

37. **Mr. Domah** asked on what grounds incommunicado detention could be applied and whether efforts had been made to review the effectiveness of the practice with a view to its abolition. Had effective measures been taken to strengthen the independence of the judiciary and provide adequate training on the prohibition of torture and ill-treatment to judges and magistrates?

38. **Mr. Tugushi** asked what steps had been taken in relation to incommunicado detention to ensure that all persons deprived of their liberty had access to their fundamental rights, including the right to consult a lawyer of their choice and the ability to meet privately with legal counsel. He also wished to know whether measures had been introduced to limit the use of physical and pharmaceutical restraints in non-medical settings such as prisons.

39. **Mr. Zhang** requested further information on the general protection system available to witnesses under the Organic Act No. 19/1994 on the protection of witnesses and experts in criminal cases.

40. **Mr. Modvig** asked how many of the 292 reported cases of torture and ill-treatment between 2009 and 2012 had been investigated, prosecuted and punished. He also wished to know what mechanisms were used to identify victims of torture or ill-treatment among asylum seekers arriving in the country and whether the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) was used in the asylum determination process.

41. **Ms. Gaer** asked what steps had been taken to install video surveillance systems in all prisons nationwide and to ensure that the national preventive mechanism was able to appoint a second doctor to conduct independent examinations of detainees held in incommunicado detention. The delegation's comments on reports that the frequency of torture allegations was proportional to the duration of incommunicado detention and that the worst forms of torture were committed by the Civil Guard would also be welcome. Lastly, she asked how many female foreign nationals in an irregular situation who experienced gender-based or domestic violence reported their cases to the police. Of those women reporting their cases, how many were able to remain in the country and what was the outcome of their cases?

42. **The Chairperson** asked whether prompt and effective action was taken in the event of a violation of diplomatic assurances and, if so, what compensation or redress was provided to victims. He requested further information on the provision in the recently approved Public Security Act that prohibited the recording and dissemination of videos and photographs of police officers during public demonstrations and the reasons for its introduction. He also wished to know what efforts had been made to improve the quality of forensic medical reports in cases of torture and to ensure that doctors and medical professionals followed the guidelines contained in the Istanbul Protocol. As to the 2014 case of the 14 migrants who had drowned off the coast of Ceuta, he asked what action had been taken to properly investigate the circumstances of their deaths and to punish those responsible. He also enquired what steps had been taken to follow up on the findings of the Human Rights Committee on communication No. 1945/2010 regarding the torture in the course of incommunicado detention of María Cruz Achabal Puertas (CCPR/C/107/D/1945/2010). Lastly, he asked what had been done to address the excessive use of force during demonstrations and to identify and prosecute law enforcement officers responsible for inflicting injuries on demonstrators.

43. **Mr. Gaye** requested further information on the number of investigations into and prosecutions of cases of torture and the type of convictions handed down.

44. **Ms. Menéndez** (Spain) thanked the Committee members for their questions and said that she would endeavour to provide constructive and informative replies at a later meeting.

The discussion covered in the summary record ended at noon.